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Long-term programme of work

Review of the list of topics established in 1996 in the light of subsequent developments

Working paper prepared by the Secretariat

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I. Introduction

1. At the sixty-sixth session of the International Law Commission, held in 2014, the Working Group on the Long-term Programme of Work identified the need to conduct a systematic review of the work of the Commission and a survey of possible future topics. It recalled that the most recent such systematic review had been undertaken in 1996, with the development of an illustrative general scheme of topics.[1] The Commission subsequently endorsed the recommendation that the Secretariat review the 1996 list in the light of subsequent developments and prepare a list of potential topics, accompanied by brief explanatory notes, by the end of the quinquennium.[2] The request was made on the understanding that the Working Group would continue to consider any topics that members may propose.

2. In the present working paper, the Secretariat seeks to undertake the first part of the request, namely a review of the 1996 general scheme,[3] with a view to updating it in the light of subsequent developments in the work of the Commission. The relevant extracts of a revised general scheme reflecting developments until the sixty-sixth session, in 2014, are presented under each thematic heading below. The same overall caveat to the 1996 general scheme, namely that it was presented for illustrative purposes and that neither the formulations nor the content commits the Commission in its future undertakings,[4] applies to the revised scheme.

3. The present working paper is also aimed at providing guidance for the work on preparing a list of potential topics, to be completed in 2016, which will take as a basis, inter alia, the list of possible future topics in the 1996 general scheme. In order not to prejudice the outcome of such work, which is currently under way, the present working paper does not include in the revised scheme the respective subsections on possible future topics. Instead, in the descriptions of developments since 1996 provided under each thematic heading, an account will also be given both of the potential topics listed in the 1996 scheme[5] and of other topics suggested (or even proposed) during the discussions in the Commission and elsewhere.

4. An attempt has been made to provide an exhaustive accounting of topics recommended over the years, including not only those made since 1996 but also those suggested in earlier years that were not reflected in the 1996 list. It was thought useful to list even those suggestions made in the past that were not pursued, not only because of the possibility that the Commission might reconsider in the light of contemporary events but also owing to the guidance that might be obtained from a consideration of both the types of topics that the Commission had taken on in the past and those that it had declined to consider. In addition to the 1996 list, the 1949[6] and 1971[7] surveys of international law and several working papers prepared by the

[1] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10* (A/69/10), para. 271.

[2] Ibid., para. 272.

[3] See *Yearbook of the International Law Commission, 1996*, vol. II (Part Two), annex II.

[4] Ibid., footnote 1.

[5] Hereinafter all references to the future topics listed in the 1996 scheme are to those presented in ibid., annex II.

[6] A/CN.4/1/Rev.1.

[7] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245.

Secretariat in 1962,[8] 1967,[9] 1968,[10] and 1970[11] were consulted in the preparation of the present working paper.

5. Reference is also made to proposals for future topics which were made in the context of the discussions in the Working Group on the Long-term Programme of Work,[12] including some which were never recorded in the official records of the Commission, and which are being listed without attribution. To the extent that references to the suggestions or proposals exist in the official records of the Commission, those are provided. Reference is also made to those various proposals for topics which the Commission has not taken up and which were either made by Member States in the context of the annual debate on the report of the International Law Commission in the Sixth Committee or transmitted directly to the Commission.[13]

6. No attempt is made to provide an analysis of the reasons for the Commission's decision not to pursue the various suggestions or proposals made over the years, since in the vast majority of cases no such explanations are to be found in the records.

II. Subject-matter categorization of topics

7. It will be recalled that the 1996 general scheme, which contained a list of potential topics for illustrative purposes, was based on general subject-matter classifications, subdivided, as appropriate, into topics already completed, topics under consideration by the Commission and possible future topics. With the exception of the subsections on possible future topics, the updated scheme retains the basic structure of the version adopted in 1996.

A. Sources of international law

1. Topics already completed:

(a) Ways and means for making the evidence of customary international law more readily available:

Report on ways and means for making the evidence of customary international law more readily available, 1950;

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[8] *Yearbook ... 1962*, vol. II, A/CN.4/145.

[9] *Yearbook ... 1967*, vol. II, A/CN.4/L.119.

[10] A/CN.4/L.128 (reproduced in the report of the International Law Commission on the work of its twentieth session, 27 May-2 August 1968, document A/7209/Rev.1).

[11] *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1.

[12] The indication of dates of when a topic was raised in the Working Group on the Long-term Programme of Work is to the first year in which the topic was proposed. Some topics were discussed in the Working Group over a period of several years.

[13] Reference is also made to some suggestions made during the deliberations of the United Nations Colloquium on Progressive Development and Codification of International Law, held in 1997, see *Making Better International Law: The International Law Commission at 50 — Proceedings of the United Nations Colloquium on Progressive Development and Codification of International Law, New York, 28-29 October 1997* (United Nations publication, Sales No. E/F.98.V.5); as well as at the seminar held to commemorate the fiftieth anniversary of the International Law Commission, in 1998, see *The International Law Commission Fifty Years After: An Evaluation — Proceedings of the Seminar Held to Commemorate the Fiftieth Anniversary of the International Law Commission, Geneva, 21-22 April 1998* (United Nations publication, Sales No. E/F.00.V.3).

(b) Reservations to multilateral conventions (1951):

Report on reservations to multilateral conventions, 1951;

(c) Extended participation in general multilateral treaties concluded under the auspices of the League of Nations (1963):

Report on extended participation in general multilateral treaties concluded under the auspices of the League of Nations, 1963;

(d) Law of treaties (1949-1966):

Vienna Convention on the Law of Treaties, 1969;

(e) Most-favoured-nation clause (1967-1978):

Draft articles on most-favoured-nation clauses, 1978;

(f) Treaties concluded between States and international organizations or between two or more international organizations (1970-1982):

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986;

(g) Unilateral acts:

Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, 2006;

(h) Fragmentation of international law:

Conclusions of the work of the Study Group on the Fragmentation of International Law: difficulties arising from the diversification and expansion of international law, 2006;

(i) Reservations to treaties (1993-2011):

Guide to practice on reservations to treaties, 2011;

(j) Effects of armed conflicts on treaties (2004-2011):

Draft articles on the effects of armed conflicts on treaties, 2011.

2. Topics under consideration by the Commission:

(a) Subsequent agreements and subsequent practice in relation to interpretation of treaties (2008-);

(b) Most-favoured-nation clause (2008-);

(c) Provisional application of treaties (2012-);

(d) Identification of customary international law (2012-).

3. Topics currently on the long-term programme of work:

Jus cogens (2014).

1. Work undertaken by the Commission

8. As regards the Commission's work on the sources of international law, the general scheme has been updated in two ways. First, reference has been made to work undertaken in its early years on the topics "Reservations to multilateral conventions", "Extended participation in general multilateral treaties concluded under the auspices of the League of Nations" and "Ways and means for making the evidence of customary international law more readily available", all of which were excluded from the 1996 scheme and resulted in the adoption of reports. The general scheme has also been updated to reflect developments after 1996. Accordingly, it refers to the conclusion of the consideration of the topics "Unilateral acts of States", "Fragmentation of international law: difficulties arising from the diversification and expansion of international law", "Reservations to treaties" and "Effects of armed conflicts on treaties", which culminated in the adoption of the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations (2006),[14] the conclusions of the work of the Study Group on the Fragmentation of International Law: difficulties arising from the diversification and expansion of international law (2006),[15] the Guide to Practice on Reservations to Treaties (2011)[16] and the draft articles on the effects of armed conflicts on treaties (2011), respectively.[17]

9. The revised scheme also reflects the topics currently under consideration by the Commission which fall under the present category, namely "Subsequent agreements and subsequent practice in relation to interpretation of treaties", "Most-favoured-nation clause",[18] "Provisional application of treaties" and "Identification of customary international law". Furthermore, the topic "*Jus cogens*" was added to the Commission's long-term programme of work at its sixty-sixth session, in 2014.[19]

2. Possible future topics

10. While the 1996 scheme included several potential future topics under the broad categories "Law of treaties", "Law of unilateral acts", "Customary international law", "*Jus cogens* (and related concepts)" and "Non-binding instruments", no reference was made to earlier related proposals. In addition, several further proposals falling under those and other categories have been made since 1996.

(a) Law of treaties

11. The 1996 general scheme listed "Multilateral treaty-making process", suggested in 1979, as the only possible future topic under the category "Law of treaties". Among the other potential topics mentioned in the records of the

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[14] *Yearbook ... 2006*, vol. II (Part Two), para. 176.

[15] Ibid., para. 251.

[16] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 75. See also the report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi, A/CN.4/L.682 and Corr.1.

[17] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 100.

[18] The Commission concluded its work on the topic in 1978, which resulted in the adoption of the draft articles on most-favoured-nation clauses. See *Yearbook ... 1978*, vol. II (Part Two), para. 74. The topic was placed on the Commission's programme of work again in 2008.

[19] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10* (A/69/10), para. 270.

Commission were the topics "International agreements concluded with or between subjects of international law other than States or international organizations"[20] and "Question of participation in a treaty",[21] both of which were referred to in the 1971 survey. Other proposals made in the Commission have included the topic "International agreements not in written form", which was recorded in the 1971 survey[22] as having been excluded from the scope of the Vienna Convention on the Law of Treaties, 1969, as well as "Principle of *pacta sunt servanda* (including the implementation of international law)"[23] and "Conflicts between treaty regimes".[24]

(b) Law of unilateral acts

12. In the list of possible future topics under this category, as conceived of in 1996, the Commission identified, inter alia, "Law applicable to resolutions of international organizations" and "Control of validity of the resolutions of international organizations". Notwithstanding the fact that the focus of the Commission's subsequent work on unilateral acts was less on the law applicable to international organizations, it is worth recalling that a related proposal was also made in 1991 ("The legal effects of resolutions of the United Nations") in the context of the Working Group on the Long-term Programme of Work.[25] It was also suggested during the discussions in the Working Group in 1998 that the Commission consider the topic "The role of international organizations in the formation of new rules of international law",[26] a topic covered in part by the ongoing work on the "identification of customary international law".

(c) Customary international law

13. The 1996 general scheme listed the topic "Legal effects of customary rules", proposed that year, as a possible future topic. It was subsequently suggested during

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[20] See *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 262-266, albeit subject to the work on the status of other subjects of international law. See also the proposal of Prof. Marcelo Kohen at the 1998 Seminar, *Proceedings*, pp. 75-78.

[21] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 269-274.

[22] See ibid., paras. 256 and 267-268. See also the proposal by Prof. Marcelo Kohen ("Treaties not in writing"), made at the 1998 Seminar, *Proceedings*, p. 75.

[23] Made in the Working Group on the Long-term Programme of Work in 1997. The 1971 survey also included a discussion of the question of the "fulfilment in good faith of the obligations of international law assumed by States", *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 33-37.

[24] Made in the Working Group on the Long-term Programme of Work in 2007. At the 1998 Seminar, Prof. Marcelo Kohen proposed the consideration of the following topics: "The consequences of the conclusion of a treaty by an international organization for its member States", "Unequal treaties", "The effects of a declaration of nullity, of suspension or the termination of a treaty, where States parties are in disagreement", as well as "modification or abrogation of a treaty by subsequent practice, the emergence of a contrary customary rule or by desuetude", which has since been partly covered by a topic presently on the work programme of the Commission. See 1998 Seminar, *Proceedings*, at pp. 75-88. Proposals were also made for the topic "Importance of supervening custom as a ground of treaty termination or revision" (Prof. Ian Brownlie) and "The interrelationship between the interpretation, modification and amendment of, and the making of reservations to treaties" and "Modification of treaties *inter se*" (Prof. Vaughan Lowe). Ibid., pp. 97 and 128-129, respectively.

[25] *Yearbook ... 1991*, vol. II (Part Two), para. 330.

[26] In 1997 and 1999, France proposed the consideration of the topic "The scope and the legal consequences of resolutions adopted by international organizations and their role in the formation of international law". See A/C.6/52/SR.19, para. 66, and A/C.6/54/SR.26, para. 35.

the discussions in the Working Group on the Long-term Programme of Work in 1998 that the Commission revisit its earlier work on the topic "Ways and means for making the evidence of customary international law more readily available". The previous year, the Working Group considered a proposal for a topic entitled "Development of norms of general international law", which conceivably would include the question of the formation of rules of customary international law.

(d) *Jus cogens* (and related concepts)

14. As indicated earlier, the topic "*Jus cogens*", which had been proposed in 1993,[27] was added to the long-term programme of work in 2014. The possibility of considering the somewhat related topic "*Erga omnes*" was envisaged in the discussions in the Working Group on the Long-term Programme of Work in 2000 but never materialized. It should be noted, however, that the topic was ostensibly envisaged in the context of the law of the environment as being related to the question of legal regulation of the global commons. It was also covered in part in the work on the responsibility of States, and that of international organizations, for internationally wrongful acts.[28]

(e) Non-binding instruments

15. The proposal to consider the question of non-binding principles was made in 1996, during the process of preparing the general scheme. The following year, the Working Group on the Long-term Programme of Work heard a proposal for the inclusion of the topic "Politically (not legally) binding acts".

(f) Other proposals

16. The records of the Commission reveal several other proposals made under the general heading "Sources of international law" but not easily categorized under the subcategories identified in 1996. These include "Acquiescence and its effects on the legal rights and obligations of States", proposed by the Secretariat in 2006,[29] and "The self-executing character of rules of international law", a proposal made in the context of the Working Group on the Long-term Programme of Work in 2012. The Commission also received, in 2011, a written suggestion from a Member State that the topic "Hierarchy in international law" be considered.[30] More general proposals to consider the "sources of international law" (1970)[31] or to undertake a "restatement of international law" (2007)[32] were also made.

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[27] *Yearbook ... 1993*, vol. II (Part One), A/CN.4/454, p. 213. The topic was also included among a set of topics proposed in the Working Group on the Long-term Programme of Work in 1997.

[28] See Articles on the responsibility of States for internationally wrongful acts, 2001, art. 48, and Articles on the responsibility of international organizations, 2011, art. 48, respectively. See also the proposal made by Poland, in 2014, for the topic "Duty of non-recognition as lawful of situations created by a serious breach by a State of an obligation arising under a peremptory norm of general international law", indicated in section II.I of the present working paper.

[29] *Yearbook ... 2006*, vol. II (Part Two), para. 261.

[30] Proposal submitted by Portugal. A similar proposal was made at the 1997 Colloquium ("Interrelationships of different bodies of law and the relative weights to be attached to them when those bodies interact with each other or suggest different conclusions to a particular legal problem"). See 1997 Colloquium, *Proceedings*, p. 37.

[31] *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 81 (proposal by Mexico).

[32] Suggested in the Working Group on the Long-term Programme of Work, in 2007.

B. Subjects of international law

Topics taken up but abandoned:

(a) Fundamental rights and duties of States (1949);

(b) "Succession" of Governments (1949).

1. Work undertaken by the Commission

17. The Commission has not undertaken the consideration of any topics under the category "Subjects of international law" since 1996, and, accordingly, the general scheme as presented then remains the same.

2. Possible future topics

18. The scheme included three categories of possible future topics: "Subjects of international law" (which had been proposed in 1949); "Statehood", under which appeared the topics "Position of States in international law" (1971), "Criteria for recognition" (1949) and "Independence and sovereignty of States" (1962); and "Government", under which appeared the topics "Recognition of Governments" (1949) and "Representative Governments" (1996).

19. The 1996 scheme did not mention several related proposals made earlier; reference is made in the 1949 survey to the possibility of considering the "obligations of territorial jurisdiction"[33] and "the territorial domain of States",[34] which ostensibly concerned questions relating to the modes of acquisition of territory, as well as specific limitations on the exercise of territorial sovereignty. Another proposal, recorded in 1970, was to consider "the international personality of international organizations".[35] The records also indicate that in that year a Member State suggested two further topics, namely "The right of a State, in particular a new State, to determine, to implement and to perfect in its political form, socially and economically, in conformity with its professed ideology and to take all necessary steps to accomplish this, e.g. decolonization, normalization, nationalization, and also steps to control all its natural resources and to ensure that those resources are utilized for the interests of the State and the people" and "The right of every State to take steps which, in its opinion, are necessary to safeguard its national unity, its territorial integrity and for its self-defence".[36] The 1971 survey, for its part, contained reference to the "question of recognition of Governments and belligerency"[37] and the "capacity of international organizations to espouse international claims",[38] the latter of which has since been covered, at least in part, by the Commission's work on the responsibility of international organizations.

20. Other possible topics identified under the present category, solely within the context of the Working Group on the Long-term Programme of Work, include "Criteria for statehood" (1996), "International organizations as international subjects of law" (1997), "Recognition of States" (1998), "Non-intervention and

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[33] A/CN.4/1/Rev.1, paras. 57-60.

[34] Ibid., paras. 64-67.

[35] *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 43.

[36] Ibid., para. 113 (proposal by Indonesia).

[37] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, para. 56.

[38] Ibid., para. 354.

human rights" (1998), "Subjects of international law" (2007) and "Principles on border delimitation" (2010).

C. Succession of States and other legal persons

Topics already completed:

(a) Succession of States with respect to treaties (1968-1974):

Vienna Convention on Succession of States in respect of Treaties, 1978;

(b) Succession of States in respect of matters other than treaties (1967-1981):

Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 1986;

(c) Nationality in relation to the succession of States (1993-1999):

Draft articles on nationality of natural persons in relation to the succession of States, 1999.

1. Work undertaken by the Commission

21. The 1996 general scheme has been updated to reflect the adoption in 1999 of the draft articles on nationality of natural persons in relation to the succession of States, 1999,[39] upon the conclusion of the work on the topic of the same title.

2. Possible future topics

22. As regards proposals for future topics identified by the Commission, the 1996 general scheme listed three potential topics: "Succession of States in respect of membership of, and obligations towards, international organizations", "'Acquired rights' in relation with State succession" and "Succession of international organizations".

23. It might be recalled that the question of the succession of Governments was referred to in the 1949 survey (together with that of States).[40] Since 1996, the following related topics were proposed in the Working Group on the Long-term Programme of Work: "Treaties with international organizations in case of the succession of States" (1998); "Impacts of State succession on membership in international organizations" (2010); and "Succession of States with respect to State responsibility" (2013).

24. During the consideration by the Sixth Committee of the Commission's report at the fifty-fourth session of the General Assembly in 1999, two delegations spoke in favour of considering the topic "Nationality of legal persons in relation to the succession of States",[41] which the Commission had recommended not be pursued,

[39] *Yearbook ... 1999*, vol. II (Part Two), para. 47.

[40] A/CN.4/1/Rev.1, paras. 44-47.

[41] A/C.6/54/SR.17, para. 19 (Costa Rica) and para. 30 (Slovenia).

following the conclusion of its work on the nationality of natural persons in relation to the succession of States.[42]

D. State jurisdiction/immunity from jurisdiction

1. Topics already completed:

   Jurisdictional immunities of States and their property (1978-1991, 1999):

   United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004.

2. Topics under consideration:

   Immunity of State officials from foreign criminal jurisdiction (2007-).

3. Topics currently on the long-term programme of work:

   (a) Jurisdictional immunity of international organizations (2006);

   (b) Extraterritorial jurisdiction (2006).

1. Work undertaken by the Commission

25. The 1996 general scheme was updated to reflect the adoption of the United Nations Convention on Jurisdictional Immunities of States and Their Property in 2004.[43] In addition, two new sections have been established to reflect topics under consideration and those currently on the long-term programme of work. The topic "Immunity of State officials from foreign criminal jurisdiction" has been inserted under the first new section. The second new section includes the topics "Jurisdictional immunity of international organizations" and "Extraterritorial jurisdiction", both of which were placed in the long-term programme of work in 2006.[44]

2. Possible future topics

26. The 1996 general scheme listed proposals for the following possible future topics: "Immunities from execution" (1996); "Extraterritorial jurisdiction", under which appeared the subtopics "Recognition of acts of foreign States" (1949), "Jurisdiction over foreign States" (1949), "Jurisdiction with respect to crimes committed outside national territory" (1949) and "Extraterritorial application of national legislation" (1992); "Territorial jurisdiction", under which was listed the topic "Territorial domain of States" (1949); and "Jurisdiction relating to public services (*compétences relatives aux services publics*)" (1996). Of these proposed topics, the question of immunities from execution was covered, at least in part, by the work on the topic "Jurisdictional immunities of States and their property". Furthermore, as already indicated, the topic "Extraterritorial jurisdiction" was added to the long-term programme of work in 2006.

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[42] *Yearbook ... 1999*, vol. II (Part Two), para. 45.

[43] General Assembly resolution 59/38, annex (not yet in force).

[44] *Yearbook ... 2006*, vol. II (Part Two), para. 257.

27. As regards the aspect of State jurisdiction, it should be recalled that the 1949 survey included a reference to the question of the "obligations of international law in relation to the law of the State", dealing with the question of the reception of international law in the domestic law of States.[45] A reference is also found in the 1970 records to a proposal by a Member State that the Commission consider the topic "Conflicts between treaties and domestic law, especially national constitutions".[46] A proposal for the consideration of the topic "Universal jurisdiction in civil matters" was made in the Working Group on the Long-term Programme of Work in 2004.

28. On the question of immunity from jurisdiction, the 1971 survey referred briefly to the possibility of considering the topic "Jurisdictional immunities with respect to armed forces stationed in the territory of another State".[47] In commenting on the 1971 survey, a member of the Commission proposed the consideration of the topic "Immunities of foreign States and bodies corporate".[48]

E. Law of international organizations

1. Topics already concluded:

   Representation of States in their relations with international organizations (1959-1971):

   Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, 1975.

2. Topics taken up but not continued:

   Status, privileges and immunities of international organizations, their officials, experts, etc. (1976-1992).

1. Work undertaken by the Commission

29. The Commission has not undertaken the consideration of any topics under the category "Law of international organizations" since 1996, and, accordingly, the scheme as presented then remains the same.

2. Possible future topics

30. As regards possible future topics, the 1996 general scheme identified "General principles of law of the international civil service", "International legal personality of international organizations" and "Jurisdiction of international organizations (implied powers, personal jurisdiction and territorial jurisdiction)". All three were proposals made in 1996. Similar proposals had been made in the past: reference is made in the 1971 survey to the question of "the legal status of international organizations, and the different types of organization".[49] The survey also included a discussion of the topic "Privileges and immunities of international organizations,

[45] A/CN.4/1/Rev.1, paras. 34-36.
[46] *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 135 (proposal by El Salvador).
[47] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, para. 77.
[48] *Yearbook ... 1972*, vol. II, A/CN.4/254, para. 17 (Mr. Reuter).
[49] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 343-346.

and of entities and officials under their authority",[50] which was subsequently taken up by the Commission under the topic "Status, privileges and immunities of international organizations, their officials, experts, etc." but was discontinued. Furthermore, two related proposals have since been made in the context of the Working Group on the Long-term Programme of Work, namely revisiting the question of the "representation of States in their relations with international organizations" (1998), which was the subject of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, 1975,[51] as well as a proposal to develop "model rules of a decision-making procedure for international conferences and conferences of parties to multilateral conventions" (2011).

F. Position of the individual in international law

1. Topics already completed:

(a) Nationality, including statelessness (1950-1954):

Convention on the Reduction of Statelessness, 1961;

(b) Expulsion of aliens (2004-2014):

Draft articles on the expulsion of aliens, 2014.

2. Topics taken up but not continued:

Right of asylum.

3. Topics under consideration:

Protection of persons in the event of disasters (2007-).

4. Topics currently on the long-term programme of work:

Protection of personal data in transborder flow of information (2006).

1. Work undertaken by the Commission

31. Under the present heading, since 1996 the Commission has undertaken work in the areas of treatment of aliens and protection of persons. The general scheme has been updated to reflect the adoption in 2014 of the draft articles on the expulsion of aliens,[52] considered under the topic of the same title. Likewise, the Commission is presently considering the topic "Protection of persons in the event of disasters". It is also worth noting that, while the consideration of the topic "Diplomatic protection" is recorded elsewhere in the general scheme,[53] the Commission conceived of the topic at the time of the adoption of the draft articles on diplomatic protection, in 2006, as one also relating to the protection of human rights. The scheme was also amended to reflect the fact that, at its fourteenth session, in 1962, the Commission

[50] Ibid., paras. 347-352.

[51] See A/CONF.67/16 (not yet in force).

[52] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10* (A/69/10), para. 44.

[53] See sect. II.I of the present working paper.

decided to include the topic "Right of asylum" in its programme[54] but did not pursue the topic. The general scheme was also updated to reflect the inclusion in 2006 of the topic "Protection of personal data in transborder flow of information" in the long-term programme of work.[55]

2. Possible future topics

32. The 1996 general scheme recorded several proposals for new topics, organized thematically. The first was "International law relating to individuals", under which appeared the general topic "The individual in international law", which had been referred to in the 1949 survey.[56] A related proposal entitled "The position of the individual in international law" was made in 2000 in the context of the Working Group on the Long-term Programme of Work.[57]

33. The 1996 scheme also included, under the theme "Treatment of aliens", the topics "Right of asylum" and "Extradition". Both had been proposed in the initial survey of 1949.[58] As indicated previously, the topic "Right of asylum" was, in fact, briefly included in the Commission's programme but was never pursued. Since 1996, proposals to revisit the topic have been made on several occasions in the context of the long-term programme of work (as early as 1998). The Commission apparently envisaged the scope of the proposed topic "Extradition" as being limited to that of aliens (despite it conceivably being broader to include that of nationals). Furthermore, the Commission's work on the expulsion of aliens has its origins, in part, in a proposal made in 1999 entitled "The law relating to the treatment of aliens", which was only partially covered by the subsequent work on expulsion (and that on diplomatic protection).[59]

34. The 1996 scheme next included a proposal for the topic "Law concerning international migrations"[60] made in 1992, which could, in its contemporary conception, be grouped under the theme "Protection of persons". Under this theme, the Commission, in the context of the long-term programme of work, also received proposals for the consideration of the topics "The refugee problem" (1990),[61] "Principles of an international information order" (1997),[62] "Humanitarian protection" (2000)[63] and "International protection of persons in critical situations" (2003). The last two have been covered, in part, by the ongoing work on the protection of persons in the event of disasters. Two related suggestions, to consider the topics "Mass exoduses of people under threat of death" and "Human cloning and genetic manipulation", were made at the United Nations Colloquium on Progressive

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[54] *Yearbook ... 1962*, vol. II, p. 190.

[55] *Yearbook ... 2006*, vol. II (Part Two), para. 257.

[56] A/CN.4/1/Rev.1, paras. 76-89.

[57] See also A/C.6/55/SR.24, para. 19 (Brazil).

[58] A/CN.4/1/Rev.1, paras. 85-89.

[59] A similar suggestion, to consider the general topic "The rights and duties of aliens", was made at the 1997 Colloquium. See 1997 Colloquium, *Proceedings*, p. 36.

[60] Support for the proposal was expressed by a Member State in 2008. See A/C.6/63/SR.25, para. 11 (United Republic of Tanzania).

[61] *Yearbook ... 1990*, vol. II (Part Two), footnote 366.

[62] In 2008, a Member State suggested that the Commission should deal with "the question of the regulation of the Internet in international law". A/C.6/63/SR.16, para. 49 (Republic of Korea).

[63] *Yearbook ... 2000*, vol. II (Part Two), para. 726.

Development and Codification of International Law (1997).[64] In 2004 and 2005, several Member States recommended that the Commission consider the question of the "responsibility to protect".[65]

35. The 1996 scheme next included the topic "Human rights and defence of democracy", which had been proposed in 1962.[66] The records of the Commission for 1970 refer to a suggestion made by a Member State in favour of the consideration of the topic "Jurisdiction of international courts and organizations with special reference to the plea of exclusion by the domestic jurisdiction in relation to questions affecting human rights".[67] Since 1996, proposals have been made in the context of the work on the long-term programme for the topics "A new generation of human rights" (1990)[68] and "Non-discrimination in international law" (2000).[69] A reference to a suggestion that the Commission consider the topic "Rights of national minorities" can be found in the 1991 report of the Commission.[70] A suggestion that the Commission consider the topic "Human rights safeguards in the extradition process" was made during the 1997 Colloquium.[71]

36. The 1949 survey proposed a general consideration of the topic "Law of nationality".[72] Several more specific proposals for topics have been made since. The 1971 survey referred to the question of the "problems which arise owing to differences between the nationality laws applied by various countries (in particular as regards the conditions under which nationality may be accorded)",[73] as well as to that of "multiple nationality and other questions relating to nationality".[74]

37. The question of the position of the individual under international law has also arisen in the context of responsibility for internationally wrongful acts. The Working Group on the Long-term Programme of Work has been presented with suggestions to consider the topics "The international legal consequences of

[64] See 1997 Colloquium, *Proceedings*, p. 37. The latter proposal was the subject of consideration by the Sixth Committee of the General Assembly in the early 2000s, which resulted in the adoption, by the General Assembly, of the United Nations Declaration on Human Cloning, General Assembly resolution 59/280.

[65] A/C.6/59/SR.24, para. 4 (Portugal, "the question of whether and under what conditions the international community and States had a responsibility to protect in cases of massive violations of human rights"), A/C.6/60/SR.11, para. 48 (Morocco), and A/C.6/60/SR.17, para. 17 (Sierra Leone).

[66] *Yearbook ... 1962*, vol. II, A/CN.4/145, paras. 177-187, which included a proposal for the creation of a special international court for the international protection of human rights (a matter dealt with separately by the Commission on Human Rights). See also the review undertaken in 1970, *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 109 (proposal by Colombia). The 1970 review also recorded a proposal by Venezuela for the preparation of a draft Convention for the defence of democracy. Ibid., paras. 107-108.

[67] *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 110 (Ceylon [Sri Lanka]).

[68] *Yearbook ... 1990*, vol. II (Part Two), footnote 366.

[69] *Yearbook ... 2000*, vol. II (Part Two), para. 726. See A/C.6/55/SR.24, para. 16 (Russian Federation).

[70] *Yearbook ... 1991*, vol. II (Part Two), para. 330.

[71] See 1997 Colloquium, *Proceedings*, p. 36.

[72] A/CN.4/1/Rev.1, paras. 76-78. See also the 1971 survey, *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 359-367.

[73] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, para. 359.

[74] Ibid., para. 367. The issue had been deferred in 1954. See *Yearbook ... 1954*, vol. II, p. 149, para. 39.

violations of human rights" (2000)[75] and "The rights of individuals arising from international responsibility" (2013).

G. International criminal law

1. Topics already completed:

   (a) Formulation of the Nürnberg Principles (1949-1950):

   Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, 1950;

   (b) Draft code of crimes against the peace and security of mankind (including the draft statute for an international criminal court) (1982-1996):

   (i) Draft code of crimes against the peace and security of mankind, 1996;

   (ii) Rome Statute of the International Criminal Court, 1998;

   (c) Obligation to extradite or prosecute (*aut dedere aut judicare*) (2005-2014):

   Final report of the Working Group on the obligation to extradite or prosecute (*aut dedere aut judicare*), 2014.

2. Topics subsumed under other topics:

   (a) Question of international criminal jurisdiction (1949-1950);

   (b) Question of defining aggression (1951).

3. Topics under consideration:

   Crimes against humanity (2014-).

1. Work undertaken by the Commission

38. In addition to amending the 1996 general scheme to reflect work undertaken by the Commission in its early years, the scheme was further updated to reflect the adoption of the draft code of crimes against the peace and security of mankind, in 1996,[76] as well as that of the Rome Statute of the International Criminal Court, in 1998.[77] The recent conclusion of the work on the topic "Obligation to extradite or prosecute (*aut dedere aut judicare*)"[78] and the inclusion of the topic "Crimes against humanity" in the Commission's work programme[79] have also been reflected in the revised scheme; the former had featured as a potential future topic in the general scheme of 1996.

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[75] *Yearbook ... 2000*, vol. II (Part Two), para. 726.
[76] *Yearbook ... 1996*, vol. II (Part Two), para. 50.
[77] United Nations, *Treaty Series*, vol. 2187, p. 3.
[78] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10* (A/69/10), para. 65.
[79] Ibid., para. 266.

2. Possible future topics

39. The only topic remaining from the 1996 list of possible future topics is "International crimes other than those referred to in the Code of Crimes against the Peace and Security of Mankind", which had been proposed that year. It should be recalled that the 1949 survey had also included a proposal for the topic "Jurisdiction with regard to crimes committed outside national territory".[80] The 1971 survey included a discussion on the topic "Other offences of international concern",[81] including suggestions for the topics "Piracy *iure gentium*"[82] and "Attacks on diplomatic agents and others to whom the receiving State owes a duty of special protection under international law";[83] the latter was subsequently dealt with by the Commission and reflected in the 1996 general scheme as a component of diplomatic law.[84] Proposals were also made in 2000, in the Working Group on the Long-term Programme of Work, to consider the topics "Legal aspects of corruption and related practices"[85] and "Jurisdictional aspect of transnational organized crime".[86] In 2008 the Working Group considered a proposal for a topic entitled "Internet and international law",[87] which, in an earlier version, had been entitled "Criminal use of Internet and State jurisdiction and obligation of servers".[88]

H. Law of international spaces

1. Topics already completed:

(a) Law of the sea — régime of the high seas and régime of the territorial sea (1949-1956):

> Four Geneva Conventions (Convention on the Continental Shelf, Convention on the Territorial Sea and the Contiguous Zone, Convention on the High Seas, Convention on Fishing and Conservation of the Living Resources of the High Seas), 1958;

(b) Law of the non-navigational uses of international watercourses (1971-1994):

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[80] A/CN.4/1/Rev.1, paras. 61-63. See also the 1962 working paper prepared by the Secretariat, *Yearbook ... 1962*, vol. II, A/CN.4/145, paras. 69-82.

[81] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 444-446.

[82] Ibid., para. 445.

[83] Ibid.

[84] See sect. II.I of the present working paper.

[85] *Yearbook ... 2000*, vol. II (Part Two), para. 726. See also A/C.6/55/SR.15, para. 76 (South Africa), and 1997 Colloquium, *Proceedings*, p. 37 ("The elimination of corruption in international commercial transactions").

[86] *Yearbook ... 2000*, vol. II (Part Two), para. 726. A similar proposal ("Transnational organized crime from the angle of jurisdiction and competence") was made in the Sixth Committee that year. See A/C.6/55/SR.22, para. 59 (Libyan Arab Jamahiriya).

[87] See also footnote 62 above.

[88] Proposals for topics relating to aspects of transnational crime were also made during the 1998 Seminar, including by Prof. Vaughan Lowe, who proposed the topics "Corrupt practices" and "International cooperation in criminal jurisdiction". 1998 Seminar, *Proceedings*, pp. 130-131 and 134, respectively.

Convention on the Law of the Non-navigational Uses of International Watercourses, 1997;

(c) Shared natural resources (2002-2008):

Draft articles on the law of transboundary aquifers, 2008.

2. Topics taken up and abandoned:

(a) Juridical regime of historical waters, including historic bays (1962);

(b) Shared natural resources (oil and gas) (2007-2010).

3. Topics currently on the long-term programme of work:

Ownership and protection of wrecks beyond the limits of national maritime jurisdiction (1996).

1. Work undertaken by the Commission

40. The 1996 general scheme has been updated to reflect the adoption of the Convention on the Law of the Non-navigational Uses of International Watercourses, in 1997,[89] as well as the adoption of the draft articles on the law of transboundary aquifers, in 2008,[90] which were developed in the context of the Commission's work under the general rubric "Shared natural resources". To the list of topics which the Commission discontinued has been added the topic "Oil and gas", also in the context of the work on shared natural resources.[91] Furthermore, the scheme has been updated to reflect the addition of the topic "Ownership and protection of wrecks beyond the limits of national maritime jurisdiction" to the long-term programme of work in 1996.[92]

2. Possible future topics

41. The 1996 general scheme arranged the possible future topics under thematic areas. Under the general area "Law of the sea" appeared the topic "Ownership and protection of wrecks beyond the limits of national maritime jurisdiction", which, as already indicated, was added to the long-term programme of work that year. The Commission's records for 1967 also make reference to a proposal to consider the topic "International bays and international straits".[93] In 2012, a proposal was made in the Working Group on the Long-term Programme of Work for the consideration of the topic "The law of maritime delimitation".

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[89] General Assembly resolution 51/229, annex.

[90] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 10* (A/60/10), para. 53.

[91] Ibid., *Sixty-second Session, Supplement No. 10* (A/62/10), para. 377.

[92] *Yearbook ... 1996*, vol. II (Part Two), para. 248.

[93] *Yearbook ... 1967*, vol. II, A/6709/Rev.1 and Rev.1/Corr.1, para. 46. See also *Yearbook ... 1968*, vol. II, annex, para. 10, and *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 144.

42. The scheme further included a reference to the "law of the air", which had been raised in the 1971 survey, and which referred to a suggestion made in the debate in the Sixth Committee that the Commission consider the topic "Air piracy".[94]

43. The 1996 scheme also included a reference to the general topic "Law of space", which was recorded as having been proposed in 1962.[95]

44. Under the heading "Legal regime of international rivers and related topics", the scheme listed the topic "Navigation on international rivers". In 1972, a member of the Commission suggested considering the question of the "pollution of international waterways",[96] a matter dealt with, in part, by the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses.

45. As for the rubric "Shared natural resources",[97] the 1996 scheme referred to proposals to consider the topics "Global commons" (1992), "The common heritage of mankind" (1996), "Transboundary resources" (1996) and "Common interest of mankind" (1996).

I. Law of international relations/responsibility

Topics already completed:

(a) Diplomatic intercourse and immunities (1954-1958):

Vienna Convention on Diplomatic Relations, and Optional Protocols, 1961;

(b) Consular intercourse and immunities (1955-1961):

Vienna Convention on Consular Relations, and Optional Protocols, 1963;

(c) Special missions (1958-1967):

Convention on Special Missions, and Optional Protocol, 1969;

(d) Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law (1972):

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973;

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[94] See *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, footnote 399. This proposal has been superseded by work undertaken elsewhere. See Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963, United Nations, *Treaty Series*, vol. 704, p. 219; Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, United Nations, *Treaty Series*, vol. 860, p. 105; and Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971, United Nations, *Treaty Series*, vol. 974, p. 177.

[95] *Yearbook ... 1962*, vol. II, A/CN.4/145, paras. 162-169.

[96] *Yearbook ... 1972*, vol. II, A/CN.4/254, para. 38 (Mr. Kearney).

[97] During the consideration of the possibility of continuing work on the general topic "Shared natural resources", following the adoption of the draft articles on the law of transboundary aquifers, a suggestion was made that the Commission could consider the transboundary movement of wildlife.

(e) Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (1977-1989):

Draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, 1989;

(f) State responsibility (1954-2001):

Draft articles on responsibility of States for internationally wrongful acts, 2001;

(g) Prevention of transboundary damage from hazardous activities (1997-2001):

Draft articles on prevention of transboundary harm from hazardous activities, 2001;

(h) International liability in case of loss from transboundary harm arising out of hazardous activities (2002-2006):

Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006;

(i) Diplomatic protection (1997-2006):

Draft articles on diplomatic protection, 2006;

(j) Responsibility of international organizations (2002-2011):

Draft articles on the responsibility of international organizations, 2011.

1. Work undertaken by the Commission

46. Since 1996, the Commission has been particularly active in this area of public international law and has concluded its consideration of several related topics, which resulted in the adoption of five texts. Hence, the 1996 general scheme has been updated to reflect the Commission's adoption of the draft articles on responsibility of States for internationally wrongful acts (2001),[98] the draft articles on prevention of transboundary harm from hazardous activities (2001),[99] the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (2006),[100] the draft articles on diplomatic protection (2006)[101] and the draft articles on the responsibility of international organizations (2011).[102]

2. Possible future topics

47. The 1996 general scheme recorded two topics for possible future consideration: "Functional protection" and "International representation of international organizations", both of which were proposed that year. It may be worth recalling that the 1949 survey had also included suggestions for the consideration of

[98] *Yearbook ... 2001*, vol. II (Part Two), para. 76. See also General Assembly resolution 56/83, annex.

[99] Ibid., para. 97. See also General Assembly resolution 65/28, annex.

[100] *Yearbook ... 2006*, para. 67; see also General Assembly resolution 61/36, annex.

[101] Ibid., para. 49; see also General Assembly resolution 62/67, annex.

[102] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 87; see also General Assembly resolution 66/100, annex.

the topics "Question of whether extinctive prescription forms part of international law"[103] and "Prohibition of abuse of rights".[104] Since 1996, the possibility of considering the topics "Damages" (1998) and "Consular functions" (2010) has been raised in the Working Group on the Long-term Programme of Work. There were also suggestions made during the seminar held to commemorate the fiftieth anniversary of the International Law Commission, in 1998, to consider the topic "Remedies" and to undertake a revision of the Vienna Convention on Diplomatic Relations, 1961, with a view to providing, inter alia, for the question of insolvencies of embassies and their staff.[105] In 2014, a Member State proposed the consideration of the topic "Duty of non-recognition as lawful of situations created by a serious breach by a State of an obligation arising under a peremptory norm of general international law".[106]

J. Law of the environment

Topics under consideration:

(a) Protection of the environment in relation to armed conflicts (2013-);

(b) Protection of the atmosphere (2013-).

1. Work undertaken by the Commission

48. Prior to 1996, the Commission had not considered any topics relating to the law of the environment more generally, as opposed to those dealing with the legal regulation of specific international spaces.[107] This has changed in recent years, and the general scheme has been revised to reflect the inclusion in the current programme of work of the topics "Protection of the environment in relation to armed conflicts" and "Protection of the atmosphere", both added in 2013.[108]

2. Possible future topics

49. As for possible future topics, the 1996 scheme recorded a proposal made in 1992 for the consideration of the topic "Rights and duties of States for the protection of the human environment". The 1971 survey identified the area of the "law of the environment" as being one suitable for future development,[109] but without making any specific proposals. "Protection of the environment" was suggested as a possible topic for consideration in 1990, in the context of the long-term programme of work.[110] The following year, a similar suggestion for the consideration of the topic "Legal aspects of the protection of the environment of

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[103] A/CN.4/1/Rev.1, para. 98.

[104] Ibid.

[105] Suggestions by Prof. Vaughan Lowe, 1998 Seminar, *Proceedings*, p. 130, and Prof. Gerhard Hafner, ibid., pp. 139-140, respectively. The Commission also received, in 2013, a request by a private entity to undertake a revision of the Vienna Convention on Consular Relations, 1963, aimed at eliminating the distinction between career and honorary consuls.

[106] A/C.6/69/SR.20, para. 30 (Poland).

[107] See sect. II.H of the present working paper.

[108] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10* (A/68/10), paras. 167-168.

[109] *Yearbook ... 1971*, vol. II (Part Two), paras. 335-339.

[110] *Yearbook ... 1990*, vol. II (Part Two), footnote 366.

areas not subject to national jurisdiction ('global commons')" was made.[111] The report of the Working Group on the Long-term Programme of Work for 2000 records the fact that proposals were made to undertake a "feasibility study on the law of environment: guidelines for international control for avoidance of environmental conflict"[112] and to consider the topics "The precautionary principle"[113] and "The polluter pays principle".[114]

K. Law of economic relations

Topics currently on the long-term programme of work:

The fair and equitable treatment standard in international investment law (2011).

1. Work undertaken by the Commission

50. To date, the Commission has not undertaken the consideration of any topics in this area. In 2011, the Commission placed the topic "The fair and equitable treatment standard in international investment law" on the long-term programme of work,[115] and the general scheme has been updated accordingly.

2. Possible future topics

51. In 1996, the scheme listed several related topics which had been proposed over the years, including "Economic and trade relations" (1971), "Legal conditions of capital investment and agreements pertaining thereto" (1993), "International legal problems connected with privatization of State properties" (1996) and "General legal principles applicable to assistance in development" (1996).[116] The records of the Commission also reveal proposals and suggestions made over the years for the consideration of the topics "The rules governing multilateral trade" (1970),[117] "International law of economic relations" (1990),[118] "The international legal regime of investments" (1990),[119] "Legal aspects of contracts between States and foreign

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[111] *Yearbook ... 1991*, vol. II (Part Two), para. 330. A similar proposal entitled "General principles of international law relating to environmental protection" was made in 1999 in the context of the Working Group on the Long-term Programme of Work.

[112] *Yearbook ... 2000*, vol. II (Part Two), para. 726. See A/C.6/51/SR.40, para. 40 (Japan), A/C.6/54/SR.23, para. 24 (Mexico), A/C.6/54/SR.27, para. 3 (Japan) and para. 22 (Austria), and A/C.6/64/SR.16, para. 69 (Japan).

[113] *Yearbook ... 2000*, vol. II (Part Two), para. 726. See A/C.6/54/SR.27, para. 3 (Japan) and para. 22 (Austria), A/C.6/55/SR.22, para. 8 (Finland), and A/C.6/55/SR.24, para. 16 (Russian Federation).

[114] *Yearbook ... 2000*, vol. II (Part Two), para. 726. See A/C.6/54/SR.23, para. 24 (Mexico), and A/C.6/54/SR.27, para. 3 (Japan) and para. 22 (Austria).

[115] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 365.

[116] See A/C.6/55/SR.22, para. 9 (Finland, "although much of development law derived from multilateral and bilateral treaties of assistance and cooperation, and unified codification was not advisable, it would be interesting to identify and develop new principles, for example non-reciprocity or best practices, which were found in such treaties"); and A/C.6/55/SR.24, para. 76 (Cuba).

[117] *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 130.

[118] *Yearbook ... 1990*, vol. II (Part Two), footnote 366. See also A/C.6/55/SR.24, para. 76 (Cuba).

[119] Ibid.

corporations" (1990),[120] "Legal aspects of economic development" (1990),[121] "The international legal regulation of foreign indebtedness" (1991),[122] "The legal conditions of capital investment and agreements pertaining thereto" (1991),[123] "Institutional arrangements concerning trade in commodities" (1991)[124] and "Foundations of investment law" (1997). Suggestions for topics were also made at the 1997 Colloquium and the 1998 Seminar, including "Foreign investment" (1997),[125] "Trade and investments" (1997),[126] "Parent/subsidiary relations" (1998)[127] and "State contracts" (1998).[128]

L. Law of armed conflicts/disarmament

1. Possible future topics

52. No developments have taken place since 1996 that require changes to the general scheme, which listed proposals for three possible topics only: "Legal mechanisms necessary for the registration of sales or other transfer of arms, weapons and military equipment between States" (1992),[129] "General legal principles applicable to demilitarized and/or neutral zones" and "General legal principles applicable to armed sanctions under Chapter VII of the Charter of the United Nations". The latter two were suggested in 1996. It is recalled that the report of the Commission of 1949 included the topic "Laws of war"[130] among the list drawn from the 1949 survey as a basis for discussion, even though the survey had not included a proposal for such a topic. The records for 1962 refer to a proposal made by two Member States to consider the topic "Prohibition of war".[131] The topic "Law of war and neutrality" was also proposed that year.[132] The 1971 survey included a reference to the topic "Prohibition of the threat or use of force",[133] and the heading "The law relating to armed conflicts" included discussion of the topics "The notion of 'armed conflict' and the effects of armed conflict on the legal relations between States",[134] "Issues relating to internal armed conflicts",[135] "The status and protection of specific categories of persons in armed conflicts"[136] and "The prohibition and limitation of the use of certain methods and means of warfare".[137] Further suggestions made in the context of the Working Group on the Long-term Programme of Work included the topics "Updating of rules relating to

[120] Ibid.
[121] Ibid.
[122] *Yearbook ... 1991*, vol. II (Part Two), para. 330.
[123] Ibid.
[124] Ibid.
[125] 1997 Colloquium, *Proceedings*, p. 36.
[126] Ibid.
[127] 1998 Seminar, *Proceedings*, p. 131 (proposal by Prof. Vaughan Lowe).
[128] Ibid., p. 133.
[129] See A/C.6/63/SR.25, para. 11 (United Republic of Tanzania).
[130] *Yearbook ... 1949*, A/CN.4/13 and Corr.1-3, paras. 15 and 18.
[131] *Yearbook ... 1962*, vol. II, A/CN.4/145, paras. 129-130 (proposals of Afghanistan and Czechoslovakia).
[132] Ibid., paras. 146-156.
[133] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 104-119.
[134] Ibid., paras. 404-411.
[135] Ibid., paras. 412-417.
[136] Ibid., paras. 418-427.
[137] Ibid., paras. 428-432.

armed conflicts and protection of the civilian population" (1990)[138] and "Legal aspects of disarmament" (1991).[139] A further proposal was made in 2005 to consider the topic "Recourse to force by States Members of the United Nations and/or regional organizations under delegation of authority pursuant to Chapter VII of the Charter of the United Nations". Another proposal, made by a Member State the same year, was for the consideration of the topic "The pre-emptive use of force in international law".[140] In 2006 and 2007,[141] a Member State proposed the following topics: "The legal consequences arising out of the use of private armies in internal conflicts"; "The legal consequences arising out of the involvement of multilateral corporations in internal conflicts"; and "The legal consequences arising out of the involvement of security agencies in internal conflicts". In 2011, a Member State proposed the topic "The application of international humanitarian law to non-State armed groups in contemporary conflicts".[142]

53. In 1997, the topic "Law relating to international peace and security" was suggested during the discussions in the Working Group,[143] and, in 1999, the topic "The law of collective security".[144] At the 1997 Colloquium, the topic "Good-neighbourliness" was recommended,[145] and at the 1998 Seminar a proposal was made for the topic "Economic sanctions".[146]

M. Settlement of disputes

Topics already completed:

Model Rules on Arbitral Procedure, 1958.

1. Work undertaken by the Commission

54. Other than the work undertaken on the Model Rules on Arbitral Procedure during the 1950s, which resulted in their adoption in 1958, the Commission has not placed any other topics related to this heading on its programme of work. Accordingly, the entry in the general scheme of 1996 remains unchanged.

55. The Commission did, however, consider the question of the peaceful settlement of disputes, under the agenda item "Other matters", at its sixty-second and sixty-third sessions, in 2010 and 2011,[147] respectively, on the basis of a note by the Secretariat[148] and a working paper prepared by Sir Michael Wood,[149] respectively.

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[138] *Yearbook ... 1990*, vol. II (Part Two), footnote 366.
[139] *Yearbook ... 1991*, vol. II (Part Two), para. 330.
[140] A/C.6/60/SR.17, para. 17 (Sierra Leone).
[141] A/C.6/61/SR.19, para. 72, and A/C.6/62/SR.24, para. 100 (Sierra Leone).
[142] A/C.6/66/SR.27, para. 29 (Sri Lanka).
[143] See also A/C.6/55/SR.24, para. 76 (Cuba).
[144] Recorded the following year in *Yearbook ... 2000*, vol. II (Part Two), para. 726.
[145] Proposal by the Romanian delegate at the 1997 Colloquium, see 1997 Colloquium, *Proceedings*, p. 109.
[146] 1998 Seminar, *Proceedings*, p. 130 (proposal by Prof. Vaughan Lowe). See also A/C.6/55/SR.22, para. 59 (Libyan Arab Jamahiriya).
[147] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10), para. 388, and ibid., *Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 416-417.
[148] A/CN.4/623.

2. Possible future topics

56. As regards possible future topics, the general scheme referred to three proposals for topics: "Pacific settlement of international disputes", included in the survey of 1949; "Model clauses for the settlement of disputes relating to the application or interpretation of future codification conventions", proposed in 1996; and "Mediation and conciliation procedures through the organs of the United Nations", also suggested in 1996. Other suggestions concerning the peaceful settlement of disputes generally were made over the years. The records for 1962 reveal proposals for the topics "More frequent recourse to arbitral and judicial settlement",[150] "Obligatory jurisdiction of the International Court of Justice"[151] and "Enforcement of international law".[152] In 1968, it was suggested that the Commission consider the topics "Questions of international legal procedure, such as model rules for conciliation"[153] and "Drawing up the statute of a new United Nations body for fact-finding in order to assist the General Assembly in its consideration of that question".[154] In 1970, reference was made to the proposals of two Member States for the Commission to consider the topics "Review of all the established machinery for the settlement of international disputes"[155] and "More frequent recourse to arbitral and judicial settlement", respectively.[156] The 1971 survey included an analysis of the general topic "Law relating to the peaceful settlement of disputes".[157] In 1991, the Commission again heard the suggestion to consider the topic "International commissions of inquiry (fact-finding)".[158] Similar proposals are to be found among the suggestions for possible topics contained in the 2011 working paper, including: "Model dispute settlement clauses for possible inclusion in drafts prepared by the Commission", "Access to and standing before different dispute settling mechanisms of various actors (States, international organizations, individuals, corporations, etc.)", "Competing jurisdictions between international courts and tribunals" and "Declarations under the optional clause, including the elaboration of model clauses for inclusion therein".[159]

57. Since 1996, the Working Group on the Long-term Programme of Work has also been presented with suggestions for the following topics: "Means and methods for the international settlement of disputes" (1997); and "Scope and content of the obligation to settle international disputes peacefully" (2005). At the 1998 Seminar, proposals to consider the topics "Evidence" and "Multiple jurisdictions in international law" were also made.[160]

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[149] A/CN.4/641.

[150] *Yearbook ... 1962*, vol. II, A/CN.4/145, paras. 137-140.

[151] Ibid., paras. 141-145; see also *Yearbook ... 1970*, vol. II, A/CN.4/203 and Corr.1, para. 97.

[152] *Yearbook ... 1962*, vol. II, A/CN.4/145, paras. 201-203; see also *Yearbook ... 1968*, vol. II, annex, p. 232; and *Yearbook ... 1970*, vol. II, A/CN.4/203 and Corr.1, paras. 121-122.

[153] *Yearbook ... 1968*, vol. II, annex, p. 233; see also *Yearbook ... 1970*, vol. II, A/CN.4/203 and Corr.1, paras. 92 and 143.

[154] *Yearbook ... 1968*, vol. II, annex, p. 233.

[155] *Yearbook ... 1970*, vol. II, A/CN.4/230, para. 85 (Israel); see also *Yearbook ... 1973*, vol. II, para. 173.

[156] *Yearbook ... 1970*, vol. II, A/CN.4/230, para. 94 (Denmark).

[157] *Yearbook ... 1971*, vol. II (Part Two), A/CN.4/245, paras. 123 and 135ff. See also A/C.6/55/SR.24, para. 16 (Russian Federation).

[158] *Yearbook ... 1991*, vol. II (Part Two), para. 330.

[159] A/CN.4/641, para. 20.

[160] 1998 Seminar, *Proceedings*, pp. 130 and 132, respectively (proposals by Prof. Vaughan Lowe).

58. Proposals for new topics have also been made in connection with the specific question of the settlement of disputes involving international organizations. These include suggestions for the topic "Arrangements to enable international organizations to be parties to cases before the International Court of Justice", made in 1968,[161] which was presented in 1970 as "Status of international organizations before the International Court of Justice".[162] The 2011 working paper included a suggestion for the topic "Improving procedures for dispute settlement involving international organizations",[163] which was considered in the Working Group on the Long-term Programme of Work during the same year.

[161] *Yearbook ... 1968*, vol. II, annex, p. 233.
[162] *Yearbook ... 1970*, vol. II, A/CN.4/230 and Corr.1, para. 139 (Mr. Tammes).
[163] A/CN.4/641, para. 20.

Annex

Topics on the long-term programme of work as at the sixty-sixth session (2014)*

Ownership and protection of wrecks beyond the limits of national maritime jurisdiction (1996)

Jurisdictional immunity of international organizations (2006)

Protection of personal data in transborder flow of information (2006)

Extraterritorial jurisdiction (2006)

The fair and equitable treatment standard in international investment law (2011)

Jus cogens (2014)

* The year of inclusion in the long-term programme of work is indicated in parentheses.